REMARKS

Status of the claims

Claims 1-16 and 18-27 were under active consideration in the subject application. Applicants respectfully note that claim 17 (omitted from the Office Action Summary) should remain pending in the application, but withdrawn from consideration. No claims have been amended, canceled, or newly added with this submission. Therefore, upon entry of this Response, claims 1-27 will remain pending, with all but claim 17 under active consideration.

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Claim objections under 35 U.S.C. § 103

Claims 1-16 and 18-27 stand rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Chung, *et al.* (EP 0699392 A2) or Wu, *et al.* (US 6,153,236) or Percel, *et al.* (US 4,537,784) in view of Borsook and Schouten. Applicants respectfully traverse this rejection.

The Examiner appears to accept, and Applicants would agree, that Chung and Wu do not teach the use of crystalline lactic acid.[1] With respect to Percel as well, the Examiner appears to acknowledge that the reference does not expressly teach the use crystalline lactic acid, but the Examiner alleges "the lactic acid is seen as being crystalline as it is anhydrous and if it is on a carrier no water is seen to make it not crystalline." However, Applicants respectfully submit that "dry" or "powdered" lactic acid is not the equivalent of "crystalline" lactic acid. Percel, in fact, clearly states that "[i]t has thus been impossible to use crystalline lactic acid for meat acidulation." Column 2, 2nd paragraph (emphasis added). For this reason, Percel teaches the use

[1] Chung describes coating of various "leavening acid cores" with a "barrier material". While four suitable organic acids are listed, notably, lactic acid is not mentioned. Page 4, 2nd paragraph. Similarly, at col. 4, lines 54-56, Wu explicitly states: "Lactic acid, *being a liquid*, is first applied to a carrier such as calcium lactate and converted to a dry solid form." (Emphasis added.)

of liquid lactic acid plated onto a calcium lactate carrier.[2] In sum, leaving aside the secondary references for the moment, Applicants respectfully submit that neither Chung, Wu nor Percel teaches the use of crystalline lactic acid.

To cure this deficiency, the Examiner introduces Borsook and Schouten for the proposition that crystalline lactic acid particles are well known. Applicants wish to make clear that the mere *existence* of crystalline lactic acid in the art is not disputed. Rather, Applicants respectfully submit that the use of crystalline lactic acid for the claimed compositions and methods were heretofore unknown and unappreciated. Percel's remarks are instructive and echo Applicants position: "Lactic acid in crystalline form is very deliquescent and when exposed to atmosphere quickly liquifies. It has thus been impossible to use crystalline lactic acid for meat acidulation." Column 2, 2nd paragraph (emphasis added).

For at least these reasons, one of ordinary skill in the art would not have found motivation nor an expectation of success in combining crystalline lactic acid with Chung, Wu, or Percel. That is, the claimed invention would not have been obvious to one of ordinary skill in the art. To the contrary, for the reasons argued herein and in the last-filed Response, the references uncovered by the Examiner "teach away" from the claimed invention. Reconsideration and withdrawal of the subject rejection is therefore respectfully solicited.

Applicants believe that the present application remains in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

[2] Should it concern the Examiner, whether the plated *composition* is crystalline is not relevant to patentability of the instant claims, because the composition would not be crystalline lactic acid, but a crystalline lactic acid-calcium lactate composition. Such compositions are not presently claimed.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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